

1 James E. Till (State Bar No. 200464)  
BOSLEY TILL LLP  
2 120 Newport Center Drive  
Newport Beach, CA 92660  
3 Telephone: (949) 999-2862  
4 E-Mail: jtill@btntlaw.com

5 Counsel for Reorganized Debtor,  
6 Terry Lee Fleming, Sr.

7  
8 **UNITED STATES BANKRUPTCY COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA - RIVERSIDE DIVISION**

10 In re  
11 TERRY LEE FLEMING, SR.,  
12  
13 Debtor and Debtor-in-Possession.

Case No.: 6:17-bk-19513-MW

Chapter 11

**SECOND AND FINAL APPLICATION  
OF BOSLEY TILL LLP, COUNSEL TO  
CHAPTER 11 DEBTOR AND DEBTOR-  
IN-POSSESSION, FOR  
COMPENSATION; MEMORANDUM OF  
POINTS AND AUTHORITIES**

**Hearing Date and Time:**

Date: August 20, 2019

Time: 2:00 p.m.

Place: Video Hearing Room 225  
3420 Twelfth Street  
Riverside, California 92501

Or Courtroom 6C  
411 W. Fourth Street  
Santa Ana, CA 90701

**SUMMARY OF FEES AND COSTS REQUESTED BY APPLICANT**

Application Period	9/1/18 – 7/9/19
Total Hours Billed	634.1 (of which 47 hours were voluntarily written-off)
Total Fees Billed	\$290,557.25 (after deduction of \$27,785.00 in written-off fees)
Total Costs Billed	\$26,959.99
Total Request	\$317,517.24
Blended Hourly Rate	\$458.22
Amount Received During Application Period	\$0
Total Amount Outstanding	\$317,517.24
Total Amount Authorized and Paid Pursuant to First Interim Application and Order Thereon	\$367,480.99
Retainer balance	\$0.00
Date of Entry of Employment Order	February 8, 2018 (Docket No. 79)
Employment Effective Date	November 15, 2017

1 **TO THE HONORABLE MARK S. WALLACE, UNITED STATES BANKRUPTCY**  
2 **JUDGE, AND THE OFFICE OF THE UNITED STATES TRUSTEE:**

3 Pursuant to the provisions of 11 U.S.C. § 330, Bosley Till LLP ("Applicant"), counsel  
4 for Reorganized Debtor, Terry Lee Fleming, Sr. ("Debtor" or "Reorganized Debtor"), hereby  
5 respectfully applies to this Court for its second and final award of fees for professional services  
6 rendered on behalf of Debtor.

7 By this Application, Applicant seeks an order of this Court awarding compensation for  
8 professional services rendered to Debtor for the time period from September 1, 2018 through  
9 and including July 9, 2019, the Plan's Effective Date (the "Application Period"). Applicant is  
10 requesting fees for services rendered and reimbursement of costs during the Application Period  
11 in the total amount of \$317,517.24.

12 In support of this Application, Applicant represents as follows:

13 In 2003, and with the intent to supplement his retirement, Mr. Fleming invested  
14 approximately \$750,000 in a real estate project called Vista Del Lago in Lake Havasu, California,  
15 involving an entity by the name of Havasu Lakeshore Investments, LLC ("HLI"). Six years later,  
16 what was intended to supplement his retirement, began to become a nightmare. In 2009, Vista Del  
17 Lago was headed toward bankruptcy, and it was anticipated that the equity investors, which  
18 included Mr. Fleming, would lose their investments. Through what can only now be seen as a  
19 series of bad choices, as is often the case with hindsight, Mr. Fleming essentially saved the  
20 project, including purportedly releasing one of the guarantors, Mr. Peloquin, who now controls  
21 HLI. In an ironic series of events that followed Mr. Fleming's purported release of Mr. Peloquin  
22 and his affiliates in connection with their multi-million liabilities and/or personal guaranties, and  
23 in the vein of "no good deed goes unpunished," Mr. Fleming has been embroiled ever since in a  
24 number of legal proceedings involving numerous parties, including an approximately \$5.1 million  
25 judgment against Mr. Fleming personally by HLI. It is these numerous legal proceedings, as well  
26 as the judgment of HLI and its onslaught of collection efforts, that forced Mr. Fleming to seek

1 relief under chapter 11. Debtor filed a Plan of Reorganization (a Second Amended Plan) in order  
2 to restructure and repay his obligations to Creditors. On April 25 and 26, 2019, the Court held  
3 hearings on confirmation of the Second Amended Plan, after which the Court confirmed Debtor's  
4 Plan. The Order Confirming Debtor's Second Amended Plan was entered on June 24, 2019.

5 On December 18, 2017, this Court entered its order authorizing Applicant's  
6 employment as reorganization counsel to Debtor (the "Employment Order"), effective  
7 November 15, 2017.

8 Applicant continually performed those legal services necessary to represent Debtor in  
9 this chapter 11 case.

10 **WHEREFORE**, Applicant requests that this Court enter an order as follows:

11 1. Awarding to Applicant compensation for the Application Period, on a final basis,  
12 in the amount of \$317,517.24 which consists of compensation for professional services rendered  
13 and reimbursement of expenses during the Application Period;

14 2. Directing Debtor to pay to Applicant the outstanding balance of fees owed to  
15 Applicant for the Application Period in the amount of \$317,517.24;

16 3. Approving on a final basis the fees and expenses previously approved by the Court  
17 in Applicant's first interim fee application; and

18 4. Granting to Applicant such other and further relief as the Court may deem just and  
19 proper under the circumstances of this case.

20 DATED: July 30, 2019

BOSLEY TILL LLP

21  
22 By: /s/ James E. Till

23 James E. Till  
24 Counsel for Reorganized Debtor,  
25 Terry Lee Fleming, Sr.  
26  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

This is Applicant's second and final fee application in this case. Applicant's first interim fee application was approved by an order entered on January 8, 2019. All of the fees and costs approved by the Court in the first interim fee application have been paid by Debtor. Applicant is reorganization counsel to Debtor and has provided services to or on behalf of Debtor in connection with the administration of its chapter 11 case, and the successful confirmation of his chapter 11 plan, during the Application Period. Applicant submits that the quality of services provided, the reasonableness of the fees requested and the results achieved in this case thus far warrant the allowance of the amounts requested.

**II. FACTUAL BACKGROUND**

**A. Background of Debtor**

Debtor is a 76-year old individual residing in La Quinta, California, who has historically lived a modest lifestyle and has tried to pay his obligations as they came due and avoid material debt obligations. Debtor has undergone treatment for numerous medical ailments in recent years, including cancer. A devoted father to his four children and seven grandchildren, Debtor had retired in 2004, a successful entrepreneur of Fleming Engineering, Inc., the business he created in 1976 when he sought to create a better lifestyle for his wife and four children than what he had experienced growing up in a small Midwestern farm town.

Shortly before his retirement in 2003, and with the intent to supplement his retirement so as to never become a financial burden either to his children or anyone else, Debtor invested approximately \$750,000 in a real estate project called Vista Del Lago in Lake Havasu, California, involving HLI.

Six years later, what was intended to supplement his retirement, began to become a nightmare. In 2009, Vista Del Lago was headed toward bankruptcy, and it was anticipated that the equity investors, which included Debtor, would lose their investments. Through what can only

1 now be seen as a series of bad choices, as is often the case with hindsight, Debtor essentially  
2 bailed out the project, including one of the guarantors, Mr. Peloquin, who controls HLI.

3       Following Debtor's purported release of Mr. Peloquin and his affiliates in connection with  
4 their multi-million dollar liabilities and/or personal guaranties, Debtor has been embroiled ever  
5 since in a number of legal proceedings involving numerous parties, including a very large  
6 judgment against Debtor personally by HLI. It is these numerous legal proceedings, as well as the  
7 judgment of HLI and its onslaught of collection efforts, that forced Debtor to seek relief under  
8 chapter 11.

9       On November 15, 2017, Debtor filed a voluntary chapter 11 petition.

10 **B. Plan Process and Confirmation of Plan of Reorganization**

11       On June 13, 2018, Debtor filed his First Amended Plan of Reorganization. By an order  
12 entered on August 21, 2018, the Court denied approval of Debtor's initial disclosure statement  
13 with respect to the First Amended Plan (without prejudice), and suggested some areas in which  
14 Debtor could improve the plan structure. Thereafter, Debtor filed a Second Amended Plan and an  
15 Amended Disclosure Statement with respect to the Second Amended Plan, which significantly  
16 improved the treatment of HLI and addressed the Court's concerns with respect to the initial plan.  
17 In November 2018, the Court entered an order approving the Disclosure Statement with respect to  
18 Debtor's Second Amended Plan. Debtor's Second Amended Plan provides for repayment of  
19 creditor claims in full over time, including full repayment of HLI's claim. A contested plan  
20 confirmation trial took place on April 25, 26 and 30, 2019, with respect to the Second Amended  
21 Plan. Following the hearings, the Court confirmed Debtor's Second Amended Plan by an order  
22 entered on June 24, 2019. The Plan's Effective Date occurred on July 9, 2019.

23 **C. Background of Applicant**

24       Applicant specializes in bankruptcy and focuses its practice to the areas of insolvency,  
25 reorganization, bankruptcy law and related litigation. Applicant's professionals are duly licensed  
26  
27  
28

1 to practice in the courts of the State of California and various United States District Courts,  
2 including the Central District of California.

3 Attached to the Till Declaration filed concurrently herewith as Exhibit "1" are biographies  
4 of Applicant's professionals who rendered services to Debtor during the Application Period,  
5 which describe the professionals' education, qualification, and work experience. The biographies  
6 address the information required by Rule 2016 of the Federal Rules of Bankruptcy Procedure and  
7 Local Bankruptcy Rule 2016-2. A summary setting forth the rates for each attorney and  
8 paraprofessional who rendered services to Debtor is attached to the Till Declaration as Exhibit  
9 "2." These rates are reasonable, consistent with the fees charged by similarly experienced  
10 attorneys in this area.

11 Other than as between the partners of Applicant, no agreement or understanding of any  
12 kind exists between Applicant and any other person for the sharing of compensation received or to  
13 be received by Applicant for services rendered to Debtor in connection with this case.

14 **D. Significant Events Requiring Applicant's Attention During this Application Period**

15 The bulk of Applicant's time during the Application Period was spent on matters which are  
16 classified for billing purposes in the following categories. Details of each of the time entries,  
17 sorted by billing category, are attached to the Till Declaration as Exhibit "3."

18 **1. Asset Analysis and Recovery**

19 In this billing category, Applicant spent the majority of time researching potential  
20 avoidance actions and preparing an equitable subordination complaint.

21 **2. Case Administration; Business Operations**

22 In these billing categories, Applicant worked closely with Debtor to ensure Debtor's  
23 ongoing compliance with the requirements of the U.S. Trustee. Applicant has also monitored and  
24 assisted Debtor with the U.S. Trustee monthly operating reports throughout the case, and reviewed  
25 and assisted with the preparation of operating cash flow statements.

1 Throughout Debtor's case, Applicant has continued to update the mailing matrix to ensure  
2 that all creditors receive adequate notice in this chapter 11 case.

3 Also included in this category are numerous procedural issues, such as obtaining hearing  
4 dates from the Court, reviewing the docket, addressing issues raised by the U.S. Trustee, and  
5 preparing documents to be filed with the Court such as proposed orders.

6 In addition, Applicant assisted Debtor with business-related issues, including security  
7 deposits pertaining to leased property.

### 8 **3. Cash Collateral**

9 In this billing category, Applicant revised and finalized pleadings in connection with an  
10 opposition to HLI's adequate protection motion.

### 11 **4. Fee/Employment Applications; Fee/Employment Objections**

12 In accordance with the provisions of the Employment Order, Applicant prepared and filed  
13 monthly Professional Fee Statements in this case.

14 Applicant prepared and filed its first interim fee application, supporting documentation,  
15 briefing in connection with approval of the application, and appeared at the hearing on the  
16 application.

### 17 **5. Lien Avoidance; Litigation**

18 Applicant revised and finalized a lien avoidance complaint relating to the validity of  
19 judgment liens asserted by secured creditor HLI. Applicant worked to prepare an opposition to a  
20 motion filed by HLI to dismiss the subordination complaint.

21 Applicant also monitored the status of pending state court litigation and the status of  
22 appeals pending in the state court action. In addition, Applicant participated in a mediation of  
23 disputes with HLI (which was not successful in resolving the matters).

24 Applicant participated in discovery related to the pending adversaries, including attending  
25 and defending depositions of witnesses, responses to written discovery demands, and review of  
26 documents being produced.



1           **6. Plan and Disclosure Statement**

2           A significant amount of time was spent in connection with the re-formulation of Debtor's  
3 plan and disclosure statement in order to address the concerns of creditors and the Court.

4           Applicant prepared and filed an amended plan and disclosure statement, the supporting  
5 documentation, a motion for approval of the disclosure statement, and went through several  
6 rounds of briefing in connection with the approval process. Applicant sought extensions of the  
7 plan exclusivity periods, in order to facilitate the amended plan and disclosure statement  
8 approvals, including preparing the motion and reply documents. Among other things, Applicant  
9 prepared revised versions of the plan and disclosure statement, prepared supporting declarations,  
10 notices, and other exhibits, and provided input on formulation of the plan structure, valuation  
11 issues, and projections. Applicant also prepared replies and related supporting documents in  
12 response to oppositions filed by HLI.

13           Applicant dedicated extensive efforts in connection with the contested plan confirmation  
14 process, including assisting with the preparation and submission of valuation testimony,  
15 preparation for the plan trial, preparation of witness lists and testimony, and preparation of  
16 confirmation briefing.

17           **7. Tax Issues**

18           In this billing category, Applicant addressed issues related to an IRS tax claim.

19           **8. Expenses**

20           A schedule of the reimbursable expenses sought by this Application is attached as Exhibit  
21 "4" to the Till Declaration.

22           **III. APPLICANT HAS COMPLIED WITH THE REQUIREMENTS OF RULE 2016**  
23           **OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE, LOCAL**  
24           **BANKRUPTCY RULE 2016-1 AND THE UNITED STATES TRUSTEE GUIDES**

25           Rule 2016 of the Federal Rules of Bankruptcy Procedure states, in pertinent part, as  
26 follows:

1 (a) Application for Compensation or Reimbursement. An entity  
2 seeking interim or final compensation for services, or reimbursement of  
3 necessary expenses, from the estate shall file an application setting  
4 forth a detailed statement of (1) the services rendered, time expended  
5 and expenses incurred, and (2) the amounts requested. An application  
6 for compensation shall include a statement as to what payments have  
7 theretofore been made or promised to Applicant for services rendered  
8 or to be rendered in any capacity whatsoever in connection with the  
9 case, the source of the compensation so paid or promised, whether any  
10 compensation previously received has been shared and whether an  
11 agreement or understanding exists between Applicant and any other  
12 entity for the sharing of compensation received or to be received for  
13 services rendered in or in connection with the case . . . .

14 This Application and the Till Declaration in support thereof sets forth all information  
15 required by Rule 2016 of the Federal Rules of Bankruptcy Procedure and Local Bankruptcy Rule  
16 2016-1, including a narrative summarizing the services provided by Applicant on behalf of  
17 Debtor.

18 **IV. THE BANKRUPTCY CODE PROVIDES FOR THE ALLOWANCE**  
19 **OF COMPENSATION AND FOR REIMBURSEMENT FOR EXPENSES**

20 Section 330 of the Bankruptcy Code authorizes the allowance of compensation and  
21 reimbursement of expenses. Section 330 of the Bankruptcy Code provides that a bankruptcy court  
22 may award to the debtor's or a committee's attorney reasonable compensation for actual,  
23 necessary services rendered by the attorney, based on the time, the nature, the extent and the value  
24 of such services, and the cost of comparable services to a non-debtor, as well as reimbursement of  
25 the actual, necessary expenses expended by the attorney on behalf of the debtor. Section 330  
26 provides, in part, as follows:

(a)(1) [T]he court may award to a trustee, an examiner, a professional person employed under section 327 or 1103 --

(A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, professional person, or attorney and by any paraprofessional person employed by any such person; and

(B) reimbursement for actual, necessary expenses.

\* \* \*

(3)(A) In determining the amount of reasonable compensation to be awarded, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including --

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; and

(E) whether the compensation is reasonable, based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

11 U.S.C. § 330(a).

As set forth herein and in the Till Declaration, Applicant's detailed time records establish that the requested fees were reasonable and necessary under the circumstances of

1 this case and the results achieved and therefore satisfy the requirements of section 330 of  
2 the Bankruptcy Code.

3 **V. CONCLUSION**

4 Based upon the time spent by Applicant, the results obtained, the experience of Applicant,  
5 as well as the fact that Applicant's fees and costs are comparable to those charged by similar law  
6 firms, Applicant hereby requests that the Court, on a final basis, approve this Application for  
7 payment of fees as requested. Applicant also seeks approval, on a final basis, of the fees approved  
8 in Applicant's first interim fee application.

9 DATED: July 30, 2019

BOSLEY TILL LLP

11 By: /s/ James E. Till

12 James E. Till  
13 Counsel for Reorganized Debtor,  
14 Terry Lee Fleming, Sr.

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:  
120 Newport Center Dr., Newport Beach, CA 92660

A true and correct copy of the foregoing document entitled (*specify*): **SECOND AND FINAL APPLICATION OF BOSLEY TILL LLP, COUNSEL TO CHAPTER 11 DEBTOR AND DEBTOR-IN-POSSESSION, FOR COMPENSATION; MEMORANDUM OF POINTS AND AUTHORITIES**, will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) **July 30, 2019**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

US Trustee's Office: ustpreion16.rs.ecf@usdoj.gov; abram.s.feuerstein@usdoj.gov; Everett.l.green@usdoj.gov  
Attorneys for Debtor: James E. Till: jtill@btntlw.com; maraki@btntlw.com  
Attorneys for Havasu Lakeshore Investments: Martin A. Eliopulos: elio@higgslaw.com; kimble@higgslaw.com  
Attorneys for Terry Lee Fleming, Jr. and Havasu Landing LLC: Michael B. Reynolds: mreynolds@swlaw.com; kcollins@swlaw.com  
Attorneys for Riverside County Treasurer-Tax Collector: Ronak N. Patel: rpatel@rivco.org; dresparza@rivco.org; mdominguez@rivco.org

☐ Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**

On (*date*) **July 30, 2019**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Terry Lee Fleming, Sr.  
78980 Carmel Circle  
La Quinta, CA 92253

Abram S. Feuerstein  
Office of the United States Trustee  
3801 University Avenue, Suite 720  
Riverside, CA 92501

☐ Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) **July 30, 2019**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

The Honorable Mark S. Wallace  
United States Bankruptcy Court  
411 West Fourth Street, Suite 6135  
Santa Ana, CA 92701-4593

Via Overnight Delivery

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

**July 30, 2019**  
Date

**Martha Araki**  
Printed Name

**/s/ Martha Araki**  
Signature